IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

LA.App..No. 1568 of 2000(B)

LAR.79/1996 of III ADDL.SUB COURT, ERNAKULAM
.....

APPELLANT: CLAIMANT

M.B.KALAVATHY, AGED 65,
"AYODHYA", PETTA JUNCTION,
TRIPOONITHURA, ERNAKULAM
REPRESENTED BY HER POWER OF ATTORNEY
MR. RHAI ABILASH, AGED 27, S/O.UPENDRA RAO,
"AYODHYA", PETTA JUNCTION, TRIPOONITHURA.

ADDL.APPELLANT NO.2.-
MR. RHAI ABILASH, AGED 27,
S/O.UPENDRA RAO,
"AYODHYA", PETTA JUNCTION, TRIPOONITHURA
IS IMPLEADED AS THE LEGAL HEIR OF THE DECEASED
SOLE APPELLANT AS PER ORDER DT. 8.7.04 IN I.A. 2151/04.

BY ADV. SRI.S.SREEKUMAR

RESPONDENT

STATE OF KERALA REPRESENTED BY
DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER SRI K.V.MANOJKUMAR

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.1568 of 2000-B

Dated: November 1, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This appeal filed by the claimant is directed against the judgment and decree in LAR No.79/1996 on the file of the III Additional Sub Court, Ernakulam. The extent of land under acquisition is 0.0494 hectares of land in Cheranelloor village in Kanayannur taluk. The purpose of acquisition was for constructing a public market for the Corporation of Cochin. Section 4(1) notification was published on 30.7.1985. The land acquisition officer awarded Rs.3957/- as land value as against the claim at the rate of Rs.45000/- per cent.

2. In support of the claim for enhanced compensation, the appellant/claimant examined AWs.1 to 3 and marked Exts.A1 to A3. The claimant has also taken out a commission and the commissioner's report is marked as Ext.C1. It is reported by the commissioner in Ext.C1 report that the acquired land is situated by the side of a lane that branch off from Chittoor road. The distance from the Chittoor road to the lane is 15 metres. The reference court also noted the fact that the Chittoor Road is an important road along which buses are plying frequently. It is also noted by the Reference Court that the acquired land is situated in an important locality where there are numerous industrial and commercial establishments. Ext.A2 land is having an extent of 4 cents and the rate at

which the property was sold on 10.1.1985 is approximately Rs.20,000/- per cent. Ext.A2 was not relied on by the court below for the reason that there is a building situated therein. Another document produced by the appellant/claimant is Ext.A3 sale deed dated 28.3.1985. The extent sold by Ext.A3 is 5.20 cents. The rate at which the sale transaction was effected is Rs.7692/- per cent. The commissioner in Ext.C1 report has reported that the land covered by Ext.A3 sale deed is lying at a distance of 1.75 kms. away from the Chittoor road and is located in the interior area and no buses are plying on the road lying by the side of that property. The commissioner also reported that apart from the aforesaid facts, the properties are comparable in all respects. Considering the locational importance of the acquired land and its nearness to Chittoor Road and the further fact that the acquired land was used for the market at the time of acquisition, the acquired land is more valuable than the land covered by Ext.A3. Since the appellant/claimant has not produced any other evidence or documents of similar lands for comparison, we are not in a position to assess the market value of the acquired land with any other property other than Ext.A3 land. Since the acquired land and Ext.A3 land are comparable in many respects and the acquired land is more valuable, we are of the view that at the least the same value as that of Ext.A3 land shall be granted to the claimant/appellant. Therefore, we fix the rate at Rs.8000/- per cent for the acquired land considering the fact that the

acquired land is lying closeby to Chittoor Road.

In the result, the appeal is partly allowed, the decree and judgment under appeal is modified, the land value for the acquired land is fixed at Rs.8000/- per cent less the amount received by the claimant. The appellant/claimant is also entitled to all eligible statutory benefits including interest on solatium. There will be no order as to costs.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A.No.1568 of 2000-B

JUDGMENT

1.11.2007